

Internal Revenue Service

memorandum

CC:TL:TS

JROSENBERG

72-N-7396-89

date: AUG 31 1989

to: District Counsel, Houston  
Attn: Jeffrey M. Kelm

from: Assistant Chief Counsel (Tax Litigation) CC:TL

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subject: Munro v. Commissioner, 92 T.C. 71 (1989)

This memorandum is in response to your request for tax litigation advice dated June 7, 1989, concerning the implications of the Tax Court's recent decision in Munro v. Commissioner, 92 T.C. 71 (1989). We are unable to respond to the specific questions that you raised in your request at this time. Our office is presently in the process of working with the Tax Court and the ABA on a legislative proposal that would modify the existing procedures in those instances when the TEFRA procedure concludes after the non-TEFRA deficiency proceeding has concluded.

While we believe that the Tax Court's opinion in Munro is technically correct in that the deficiency procedures and the TEFRA partnership procedures were intended to be totally separate, the "Chinese Wall" solution proposed by the Tax Court is unworkable as a practical matter. In the typical case, computing the tax liability without reference to partnership items will have the same effect as though those partnership items were disallowed. If the partnership items were losses, the effect will be a greatly increased deficiency for the nonpartnership items. If, when the partnership proceeding is completed, the partner is ultimately allowed any part of the losses, he will receive part of the increased deficiency back in the form of an overpayment. However, in the interim, he will have been subject to assessment and collection of a deficiency inflated by items still in dispute in the partnership proceeding. In essence, implementation of Munro in the typical case means loss of a prepayment forum for the partnership proceeding. As a policy matter, we view this result as being an inappropriate and unintended consequence of implementing Munro.

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The legislative proposal would modify existing procedures in those instances when the TEFRA procedure concludes after the non-TEFRA deficiency proceeding has concluded. The deficiency procedures would continue to treat disputed partnership items as correctly reported for purposes of the deficiency proceeding. In those cases where resolution of the partnership items would place the partner in a different tax bracket which would have increased the tax liability attributable to the previously resolved nonpartnership items, this "bracket creep" tax liability will be treated as a computational adjustment which may be made pursuant to the partnership procedures. Amendments to sections 6211, 6230(a), 6231(a)(6), and 6501 will be necessary to effectuate the change.

A small group of cases raises the so-called pure Munro situation, i.e., due to excessive tax shelter losses, failure to remove the shelter losses will negate any deficiency for nonpartnership items. In this situation, the problem is resolved by converting the partnership items into nonpartnership items as a special enforcement matter. Thus, the taxpayer would be subject to a single deficiency proceeding. Changes to section 6231 will be necessary.

Pending adoption of a legislative correction, we had proposed to the Tax Court Ad Hoc TEFRA committee that decision documents impacted by Munro would include a stipulation agreeing to assessment of "bracket creep" upon completion of the TEFRA proceeding. However, we were advised that the court had not made any definite decision regarding this interim proposal for handling cases.

Due to the continuing controversy surrounding the impact of Munro, you should continue to refrain from filing documents with the Tax Court that are impacted by the Munro opinion until further notice. See CATS Message of June 22, 1989 (copy attached). As soon as an agreement is reached among the Ad Hoc TEFRA committee members and the Tax Court, we will advise you of the agreed upon procedures. In the meantime, if issuance of a statutory notice is necessary to prevent expiration of a period of limitations, the deficiency should be computed in accordance with Notice N(35)000-57 (May 10, 1989) concerning computation of deficiencies after Munro. We have been advised that Appeals will also be computing deficiencies in accordance with that Notice in cases where issuance of a statutory notice is necessary because of an expiring period of limitations.

Should you have any further questions regarding this matter please contact Jeff Rosenberg at (FTS) 566-3233.

MARLENE GROSS

By: Curtis G. Wilson *Curtis G. Wilson*  
Senior Technician Reviewer  
Tax Shelter Branch

Attachment:  
As stated.